Justice

Use of Adult Alternative Measures in Saskatchewan
1999-2000 and 2000-2001

Policy, Planning and Evaluation
April 2003

Saskatchewan

104-05098/

Table of Contents

page

Tables and Figures i

Section 1: Introduction 1
- What Are Alternative Measures?
- Who Is Involved?
- Types of Alternative Measures
- The Alternative Measures Process
- Service Delivery

Section 2: Use of Alternative Measures Programs 5
- Referrals to Alternative Measures Programs
- Post- and Pre-Charge Referrals
- Gender, Age, Employment and Ethnic Origin
- Offences
- Victims
- Interventions

Section 3: In Summary . . . 23

Appendix A: Alternative Measures Policies 27

Appendix B: Alternative Measures Form 57

Tables and Figures

Tables

		page
Table 1:	Number of referrals to individual programs, 1999-00 and 2000-01	7
Table 2:	Post- and pre-charge referrals, 1999-00 and 2000-01	8
Table 3:	Post- and pre-charge adult referrals by program, 1999-00 and 2000-01	9
Table 4:	Gender of adult offenders attending alternative measures programs, 1999-00 and 2000-01	10
Table 5:	Age of adult offenders attending alternative measures programs, 1999-00 and 2000-01	10
Table 6:	Percent of total guilty cases referred to alternative measures programs (2000-01)	14
Table 7:	Victim participation in alternative measures programs, 1999-00 and 2000-01	16
Table 8:	Agreements successfully completed and type of victim participation	17
Table 9:	Cases closed, 1999-00 and 2000-01	17
Table 10:	Types of interventions, 1999-00 and 2000-01 (closed cases)	18
Table 11:	Successful and unsuccessful completion of agreements reached in alternative measures programs, 1999-00 and 2000-01	19
Table 12:	Reasons for agreements not being reached in alternative measures programs, 1999-00 and 2000-01	20
Table 13:	Case outcomes from agreements (N=1084 in 1999-00 and N=1054 in 2000-01)	20

Figures

Figure 1:	Alternative measures continuum	2
Figure 2:	Alternative measures process for adults	3
Figure 3:	Ethnic origin of offenders 1999-00 and 2000-01 (including those not stated)	11
Figure 4:	Alternative measures referrals by offence category, 1999-00 and 2000-01 (unknowns=1%)	12
Figure 5:	Most common offences referred to alternative measures programs, 1999-00 (N=1440) and 2000-01 (N=1388)	13
Figure 6:	Victim type in alternative measures referrals, 1999-00 and 2000-01	15

Section 1: Introduction

As part of its Community Justice Program, Saskatchewan Justice funds adult alternative measures programs. These programs are delivered in communities in a variety of ways. Some are part of community justice contracts; some are dedicated alternative measures programs; and, a few are fee-for-service contracts. In the mid 1990s there were two adult programs operating in Saskatchewan, Saskatoon Community Mediation Services and the Regina Alternative Measures Program. Other programs developed until in 2002-03 Saskatchewan Justice funded 25 adult alternative measures programs.

Youth alternative measures programs have been operating in Saskatchewan since 1983. Initially funded by Saskatchewan Social Services, they now fall within the mandate of Saskatchewan Corrections and Public Safety. Community-based organizations, youth workers and service providers (e.g., trained self-employed mediators) deliver these programs.

What Are Alternative Measures?

Alternative measures programs offer an option within the criminal justice system that allows crime to be addressed outside of the formal court system. Adults accused of a criminal offence who take responsibility for their conduct may be offered the opportunity to address the harm caused by their actions by participating in a community-based program. "These programs attempt to balance the needs of victims, the accused and their communities while ensuring that society is protected. They offer accused persons a chance to take responsibility for their behaviour and to address the harm they have committed."[1]

The aims of alternative measures programs are to:

- Increase the offender's accountability and responsibility for criminal actions
- Promote the involvement of victims in the process
- Protect society by deterring accused persons from further criminal behaviour
- Enhance the community's participation in resolving conflicts
- Involve the community in addressing the crime, and
- Protect the interests of society.[2]

Who Is Involved?

A successful alternative measures program requires collaboration between community programs and several sectors of the criminal justice system. Relationships based on respect and trust must exist among program personnel, victim services, police, prosecutors and courts to enable programs to operate effectively and efficiently.

---

[1] Saskatchewan Justice (2002), *Alternative Measures Policies*, pg.1
[2] ibid

Types of Alternative Measures

An alternative measures program may offer a variety of interventions such as:

- Victim-offender mediation where the victim and offender meet with a trained mediator who assists in resolving the conflict. A surrogate victim may be used if the victim is unwilling or unable to participate.

- Circles where the victim, offender, their supporters and other interested members of the community meet with a trained facilitator to resolve the conflict and work out an agreement that satisfies all participants.

- Diversion where a plan is developed with the offender to resolve the situation, including referrals to programs that may address personal issues (e.g., counselling, educational programs, addictions treatment).

The Alternative Measures Process

Section 717 of the *Criminal Code* allows the use of alternative measures for adult accused.

The decision about who is referred to an alternative measures program rests with the Crown Prosecutor. A Ministerial Order and the *Saskatchewan Diversion Policy (1996)* states which offenders and types of offences are eligible for alternative measures programs. (Refer to Appendix A). Referrals can be made either before a charge is laid (pre-charge) or after (post-charge).

As shown in Figure 2 once the police have determined that the case should proceed it is sent to the Crown prosecutor, who then decides whether the accused is eligible for referral to an alternative measures program. Referral may be made either without charging (pre-charge) or after a charge is laid (post-charge). Upon receipt of the referral, the program coordinator contacts the accused and the victim to determine the best way to resolve the situation.

At this time there are no provincial criteria for making decisions about the type of intervention to use. Some agencies have developed their own screening process; some use only one type of intervention in all cases. Figure 1 shows the continuum of alternative measures choices based on victim involvement.

Figure 1: Alternative measures continuum

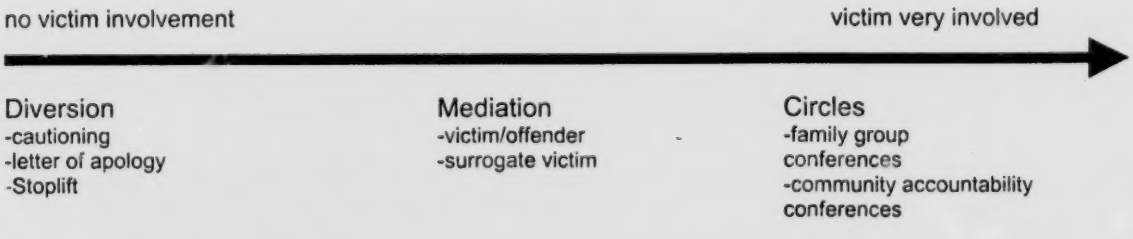
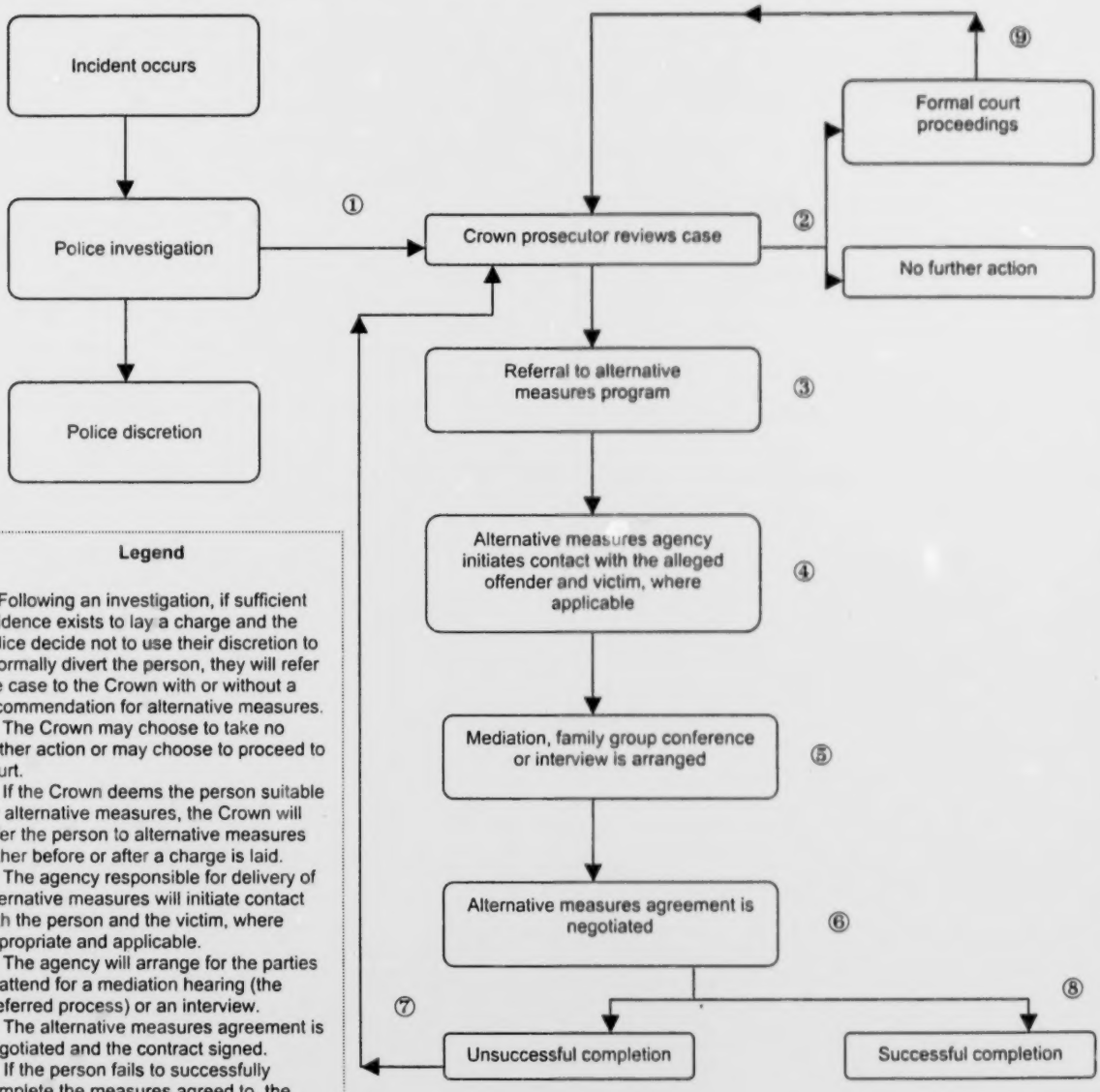


Figure 2: Alternative measures process for adults



Legend

① Following an investigation, if sufficient evidence exists to lay a charge and the police decide not to use their discretion to informally divert the person, they will refer the case to the Crown with or without a recommendation for alternative measures.
② The Crown may choose to take no further action or may choose to proceed to court.
③ If the Crown deems the person suitable for alternative measures, the Crown will refer the person to alternative measures wither before or after a charge is laid.
④ The agency responsible for delivery of alternative measures will initiate contact with the person and the victim, where appropriate and applicable.
⑤ The agency will arrange for the parties to attend for a mediation hearing (the preferred process) or an interview.
⑥ The alternative measures agreement is negotiated and the contract signed.
⑦ If the person fails to successfully complete the measures agreed to, the case is referred back to the Crown.
⑧ If the person completes the agreement successfully, all those involved are notified.
⑨ If the Crown formally charges a person he/she may appear in court prior to being referred to alternative measures.

Source: Canadian Centre for Justice Statistics (1999), Alternative Measures in Canada – 1998, pp9-.17

Programs may return referrals to the Crown at any stage of the alternative measures process. For example, the Crown may believe the person is taking responsibility for his or her actions, but the intake interview may show otherwise; the parties may be unable to reach an agreement to resolve the situation; or, the program may not be able to contact the accused.

Service Delivery

In the 2002-03 fiscal year contracts for service delivery of adult alternative measures are held by:

- 8 tribal councils: Agency Chiefs Tribal Council, Battlefords Tribal Council, File Hills Qu'Appelle Tribal Council, Meadow Lake Tribal Council, Prince Albert Grand Council, Saskatoon Tribal Council, Inc., Touchwood Agency Tribal Council, Yorkton Tribal Council

- 6 band councils: Ahtahkakoop First Nation, Beardy's & Okemasis, Mistawasis First Nation, One Arrow First Nation, Onion Lake First Nation, Thunderchild First Nation

- 15 community-based organizations: Battlefords Adult Diversion Program, Estevan Alternative Measures Program, La Loche Community Justice Program, Lloydminster Adult Diversion Program, Metis Family and Community Justice Services Inc., Moose Jaw Diversion Program, Nipawin Alternative Measures Program, Prince Albert Alternative Measures Program, Qu'Appelle Valley Friendship Centre, Regina Alternative Measures Program, Saskatoon Community Mediation Services, Swift Current Community Justice Forum Adult Mediation-Diversion Program, Tisdale Community Justice Program, Weyburn Alternative Measures Program, Yorkton Alternative Measures Program

In general terms, alternative measures programs may be delivered through community justice contracts or may be stand-alone programs. For example:

- Tribal and band councils usually have a mandate to deliver alternative measures in their community justice contracts. Other components of the contract may include community work such as crime prevention and youth-focused activities and healing or reintegration circles.

- Community-based organizations delivering alternative measures may have contracts with Saskatchewan Justice where they:
  - → only deliver alternative measures programs (e.g., Saskatoon Community Mediation Services, Prince Albert Alternative Measures Program)
  - → deliver alternative measures as one part of their service delivery mandate (e.g., Moose Jaw Alternative Measures Program through the John Howard Society and Swift Current Community Justice Forum through the Salvation Army)
  - → deliver alternative measures through community justice committees (e.g., Nipawin Alternative Measures Program, Tisdale Community Justice Program), and
  - → deliver alternative measures through individuals working on a fee-for service basis (e.g., Battlefords Adult Diversion Program).

Section 2: Use of Alternative Measures Programs

Data Collection

Some programs enter their data directly onto a copy of the Alternative Measures Database housed at the program office or send their data to a central location for entry. These data are currently collected by Saskatchewan Corrections and Public Safety and made available to Policy, Planning and Evaluation, Saskatchewan Justice.

Those adult programs that do not enter their data submit printed Alternative Measures Forms to Policy, Planning and Evaluation, Saskatchewan Justice for entry onto the database.

Each year data collection procedures improve. However, some challenges still exist, for example:

- Not all adult programs submit their print data for entry onto the database. This results in underreporting the number of referrals to alternative measures programs.
- Data may not be entered consistently across programs. There may be missing data or data that cannot be aggregated in this report.
- One large program does not use the same database as the others and, therefore, does not collect data in the same way. This means that data from this program cannot be used in detailed data analyses.
- Information about victims may be missing. This hampers the presentation of a victim profile.

Systematic data collection on alternative measures programs began in 1995 when the Alternative Measures Form was piloted in several programs. By 1999-00 the majority of programs were reporting in a timely manner. For the purpose of this analysis, Justice-funded community justice programs and their respective alternative measures programs can be divided into four reporting categories:

- Those programs offering adult alternative measures programs that enter data on a database housed at their program office or at a central location.
- Those offering adult alternative measures programs that submit Alternative Measures Forms to Saskatchewan Justice for data entry.
- Those offering adult alternative measures programs that do not submit data.
- Community justice programs that do not offer alternative measures programming.

This section reports on the use of adult alternative measures in Saskatchewan in fiscal years 1999-00 and 2000-01. Except for referral numbers, all analyses are based on the Alternative Measures Database. Because data was not entered or submitted for the 1999-00 and 2000-01 fiscal years, detailed information is not available on programs offered by Agency Chiefs Tribal Council, Prince Albert Grand Council (on-reserve), Saskatoon Tribal Council (on-reserve), Mistawasis First Nation and Onion Lake First Nation. Data from Saskatoon Community Mediation Services cannot be included in the detailed analysis because it uses a database that is incompatible with the Alternative Measures Database.

Although the number of youth referrals made to programs is reported, no further analysis is provided. Information on youth programs is available in the document *Saskatchewan Social Services Alternative Measures Program*, July 2001.

Referrals to Alternative Measures Programs

In 1999-00 there were 21 programs offering adult alternative measures that submitted detailed data to the Alternative Measures Database. The number of programs increased to 22 in 2000-01. In addition, four programs delivered alternative measures programs but did not submit detailed data and one program submitted detailed data but could not be included in the analysis because of data definitional differences.

According to the database, the number of cases referred to adult alternative measures programs remained fairly constant in 1999-00 and 2000-01 at 2283 and 2226 respectively. Youth cases increased by 43% from 2049 in 1999-00 to 2931 in 2000-01, but this may be due, in part, to improved reporting procedures.

Data taken from the program reports of those adult programs not reporting through the database show that an additional 552 referrals were made in 2000-01. These data bring the number of referrals to adult alternative measures to at least 2778 in 2000-01.

The data in Table 1 provides program information on adult and youth referrals to the programs included in the database. As shown, all adult alternative measures were delivered through tribal councils, community-based organizations and fee-for-service providers. Some youth alternative measures were delivered through youth workers then working with the Department of Social Services.

In the tables the columns titled "?" contain data that are missing or unreported. For example, on Table 1 numbers in the "?" column indicate those referrals in which age of the accused is unknown.

Table 1: Number of referrals to individual programs, 1999-00 and 2000-01

Program	1999-00 Fiscal Year				2000-01 Fiscal Year			
	Adults	Youth	?	Total	Adult	Youth	?	Total
Programs serving adults only								
Beardy's/Okemasis First Nation	3	--	--	3	1	--	--	1
Estevan Alternative Measures Program	29	--	--	29	6	--	--	6
Hudson Bay CJC*	--	--	--	--	2	--	--	2
Melfort CJC	--	--	--	--	6	--	--	6
Nipawin Alternative Measures Program	5	--	--	5	8	--	--	8
Saskatoon Community Mediation Services	843	--	--	843	838	--	--	838
Swift Current Community Justice Forum	27	--	--	27	27	--	--	27
Tisdale CJC	1	--	--	1	--	--	--	--
Weyburn Alternative Measures Program	29	--	1	30	16	--	--	16
Programs serving adults and youth								
Battlefords Alternative Measures Program	85	235	1	321	62	91	2	155
Battlefords Tribal Council	3	28	--	31	29	47	--	76
Buffalo Narrows CJC	9	4	2	15	12	6	--	18
File Hills Qu'Appelle Tribal Council	35	67	7	109	14	34	--	48
La Loche Community Justice Program	20	9	2	31	50	11	--	61
Lloydminster Friendship Centre	--	1	--	1	15	32	--	47
Meadow Lake CJC	12	19	--	31	9	6	--	15
Meadow Lake Tribal Council	13	13	--	26	11	13	--	24
Moose Jaw Diversion Program (John Howard Moose Jaw)	141	63	3	207	94	174	2	270
Prince Albert Alternative Measures Program	205	276	--	481	223	337	--	560
Qu'Appelle Valley Friendship Centre AMP	42	106	--	148	48	120	--	168
Regina Alternative Measures Program	610	58	--	668	609	174	3	786
Touchwood Agency Tribal Council	30	21	--	51	42	74	--	116
Yorkton Tribal Council**	137	137	--	274	104	153	6	263
Programs serving youth only								
Big River	--	2	--	2	--	--	--	--
Birch Hills CJC	--	1	--	1	--	--	--	--
Buffalo Narrows Social Services	--	3	1	4	--	6	--	6
Estevan Social Services	--	15	--	15	--	38	--	38
John Howard Regina	--	616	5	621	--	631	--	631
John Howard Saskatoon	--	156	2	158	--	628	2	630
Kikinahk Friendship Centre, La Ronge	--	28	--	28	--	20	1	21
Melfort Social Services	--	--	--	--	--	25	--	25
Nipawin Social Services	--	5	11	16	--	32	--	32
Rosetown/Kindersley Social Services	--	--	--	--	--	9	--	9
Saskatoon Tribal Council Youth Circles	--	118	--	118	--	171	--	171
Swift Current Social Services	--	25	--	25	--	39	--	39
Weyburn Social Services	--	21	--	21	--	28	--	28
Yorkton Social Services	--	22	--	22	--	32	--	32
Missing data	--	--	1	1	--	--	--	--
TOTAL	**2283**	**2049**	**36**	**4368**	**2226**	**2931**	**16**	**5177**

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

* CJC = community justice committee: a committee consisting of community representatives with an understanding of justice issues who have been trained in facilitating mediations and community accountability forums.

**These data include both on-reserve and urban caseloads.

Tables 2 to 13 and Figures 3 to 6 contain data on adult referrals only.

Post- and Pre-Charge Referrals

As shown on Table 2, the majority (86% in 1999-00 and 85% in 2000-01) of adult referrals were made after a charge was laid (post-charge). This pattern holds across programs receiving the largest number of referrals (shaded on Table 3), with Moose Jaw Diversion Program having the lowest percentage of post-charge referrals at approximately 75% and Yorkton Tribal Council having the highest at almost 100%.

Table 2: Post- and pre-charge referrals, 1999-00 and 2000-01

Year	Post-charge referrals		Pre-charge referrals		?		Total
	#	%	#	%	#	%	
1999-00	1955	86%	320	14%	8	0.3%	2283
2000-01	1888	85%	325	15%	13	0.5%	2226

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

It is difficult to set targets for pre-charge referrals since they depend on many factors such as the type of incident, attitude and behaviour of the accused at the time of police investigation, police knowledge of the accused, and police training in the area of restorative justice and alternative measures. If a target of one third of the cases were set, then seven programs were at that point or better in 2000-01; however, three of these programs dealt with less than ten referrals in total. Six programs received no pre-charge referrals.

Programs in smaller centres appear to deal with more pre-charge referrals than those in larger urban centres. For example, Battlefords Alternative Measures Program dealt with approximately 40% of its caseload pre-charge and Meadow Lake Community Justice Committee dealt with approximately 70%. Perhaps a reason pre-charge referrals are used more often in smaller centres is that police and prosecutors have more confidence in the decision due to their familiarity with the offender and the situation

Further exploration of the use of pre- and post-charge referrals is needed, including a study of cost and resource-use effectiveness. The impact of alternative measures programs on court resources is a critical issue, including cases that are investigated, referred and then returned to court for some reason. With unsuccessful pre-charge referrals, additional police resources may be needed to re-investigate the case in order to lay a charge..

Table 3: Post- and pre-charge adult referrals by program, 1999-00 and 2000-01 (not including 552 adult cases cited in 2000-01 program reports)

Program	1999-00 Fiscal Year						2000-01 Fiscal Year					
	Post-charge		Pre-charge		?	Total	Post-charge		Pre-charge		?	Total
	#	%	#	%	#	#	#	%	#	%	#	#
Battlefords Alternative Measures Program	49	58%	36	42%	--	85	39	63%	23	37%	--	62
Battlefords Tribal Council	2	67%	1	33%	--	3	15	52%	14	48%	--	29
Beardy's/Okemasis First Nation	3	100%	--	--	--	3	1	100%	--	--	--	1
Buffalo Narrows CJC	7	78%	1	11%	1	9	6	50%	1	8%	5	12
Estevan Alternative Measures Program	19	66%	10	34%	--	29	4	67%	--	--	2	6
File Hills Qu'Appelle Tribal Council	33	94%	1	3%	1	35	13	93%	1	7%	--	14
Hudson Bay CJC	--	--	--	--	--	--	--	--	2	100%	--	2
John Howard Regina	4	100%	--	--	--	4						
La Loche Community Justice Program	14	70%	4	20%	2	20	34	68%	15	30%	1	50
Lloydminster Friendship Centre	--	--	--	--	--	--	3	20%	12	80%	--	15
Meadow Lake CJC	3	25%	9	75%	--	12	3	33%	6	67%	--	9
Meadow Lake Tribal Council	8	62%	3	23%	2	13	8	73%	--	--	3	11
Melfort CJC	--	--	--	--	--	--	3	50%	3	50%	--	6
Moose Jaw Diversion Program	101	72%	38	27%	2	141	72	77%	22	23%	--	94
Nipawin CJC	1	20%	4	80%	--	5	1	13%	7	88%	--	8
Prince Albert Alternative Measures Program	188	92%	17	8%	--	205	196	88%	27	12%	--	223
Qu'Appelle Valley Friendship Centre	20	48%	22	52%	--	42	31	65%	17	35%	--	48
Regina Alternative Measures Program	522	86%	88	14%	--	610	506	83%	103	17%	--	609
Saskatoon Community Mediation Services	758	90%	85	10%	--	843	769	92%	69	8%	--	838
Swift Current Community Justice Forum	26	96%	1	4%	--	27	26	96%	--	--	1	27
Tisdale CJC	1	100%	--	--	--	1	--	--	--	--	--	--
Touchwood Agency Tribal Council	30	100%	--	--	--	30	40	95%	2	5%	--	42
Weyburn Alternative Measures Program	29	100%	--	--	--	29	16	100%	--	--	--	16
Yorkton Tribal Council	137	100%	--	--	--	137	102	98%	1	1%	1	104
TOTAL	**1955**		**320**		**8**	**2283**	**1888**		**325**		**13**	**2226**
	86%		**14%**				**85%**		**15%**			

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

Data on Tables 4 to 13 and Figures 3 to 6 do not include Saskatoon Community Mediation Services as it counts cases in a different way with a different database. The number of referrals to this program were:

- 1999-00: 843 cases
- 2000-01: 838 cases.

Gender, Age, Employment and Ethnic Origin

Gender

In both 1999-00 and 2000-01, slightly less than two thirds of the offenders referred to alternative measures programs were male (Table 4).

Table 4: Gender of adult offenders attending alternative measures programs, 1999-00 and 2000-01

Year	Male		Female		Not stated		Total
	#	%	#	%	#	%	
1999-00	911	63%	524	36%	5	0.3%	1440
2000-01	862	62%	525	38%	1	0.1%	1388

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

Age

In 1999-00, programs did not report age data for 49% of the offenders. In 2000-01, this percentage decreased to 16%. Because of the large amount of missing data, comparisons cannot be made across categories for fiscal years.

Of those for whom data were available, Table 5 shows that the age breakdown is similar in both years. The majority (55% and 56%) of offenders fell into the 18 to 25 years age category. As age increases, the number of offenders in each category decreases.

Table 5: Age of adult offenders attending alternative measures programs, 1999-00 and 2000-01

Age	1999-00			2000-01		
	#	%	% of reported	#	%	% of reported
18 to 25	406	28%	**55%**	648	47%	**56%**
26 to 34	157	11%	**21%**	187	13%	**16%**
35 to 44	103	7%	**14%**	168	12%	**14%**
45 to 54	34	2%	**5%**	79	6%	**7%**
55 to 64	16	1%	**2%**	40	3%	**3%**
65 +	21	1%	**3%**	38	3%	**3%**
Not available	703	49%		228	16%	

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

The 2000-01, Saskatchewan adult court data for the most common offences referred to alternative measures also show a downward trend in the number of offenders in each age group. However, there are 20% fewer accused in court in the 18 to 24 category (36%) and 20% more in the 25 to 34 age category (31%)[3].

[3] Statistics Canada (2002), *Adult Court Survey 2000-01*.

Employment

Programs did not record employment and school attendance information for 52% of the offenders in 1999-00 and for 34% in 2000-01.
Of those offenders for whom data are available, the following is known:

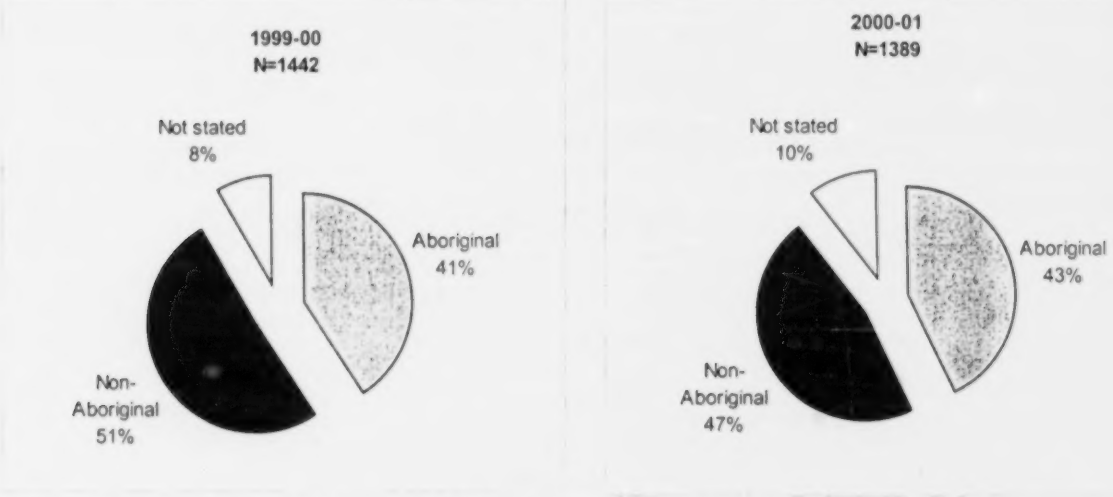
- 44% (1999-00) and 42% (2000-01) were working full-time,
- 30% (1999-00) and 30% (2000-01) were not working and not attending school,
- 14% (1999-00) and 16% (2000-01) were attending school, and
- 11% (1999-00) and 10% (2000-01) were working part-time.

Ethnic origin

Figure 3 shows the data on ethnic origin of offenders. In 10% of the referrals the ethnic origin was not recorded. Excluding unknowns:

- in 1999-00, 45% of the offenders were Aboriginal, and
- in 2000-01, 48% were Aboriginal.

Figure 3: Ethnic origin of offenders 1999-00 and 2000-01 (including those not stated)



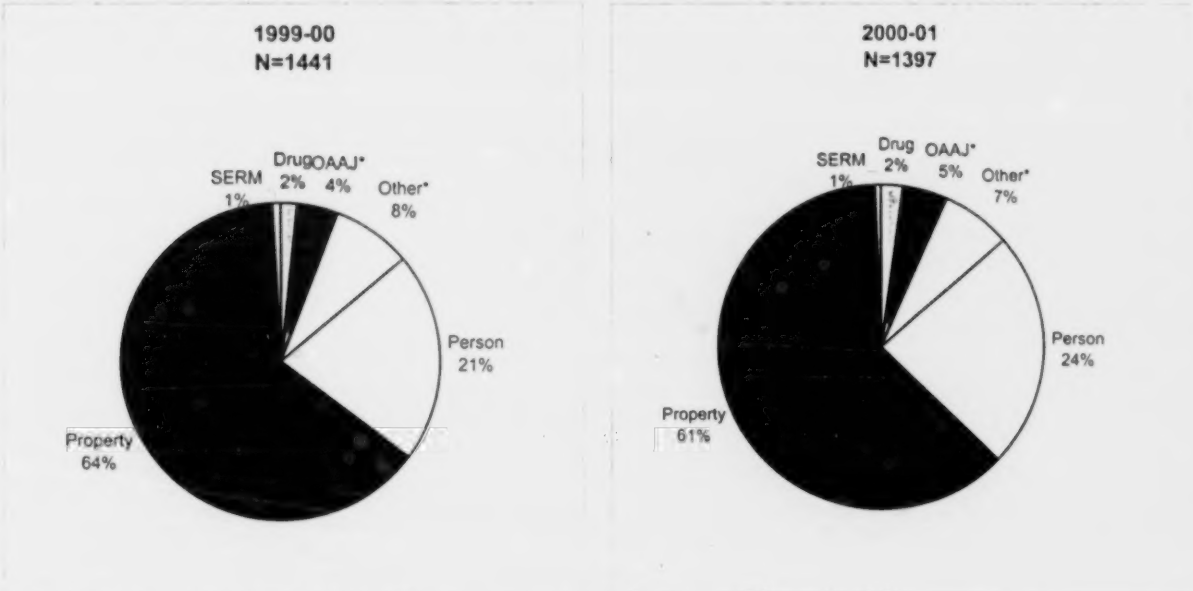
Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

Offences

Data on offences are gathered according to category and specific offence. Almost two thirds of offences in both fiscal years were property offences; approximately one fifth were against person offences. As shown on Figure 4:

- 63% of the offences were property offences in 1999-00 and 62% in 2000-01.
- 21% were against person offences in 1999-00 and 23% in 2000-01.

Figure 4: Alternative measures referrals by offence category, 1999-00 and 2000-01 (unknowns=1%)



* Other offences include *Criminal Code* offences such as forgery, causing a disturbance, failure to stop at scene; OAAJ (Other Against Administration of Justice) offences include contempt of court, failure to appear and breach of probation.

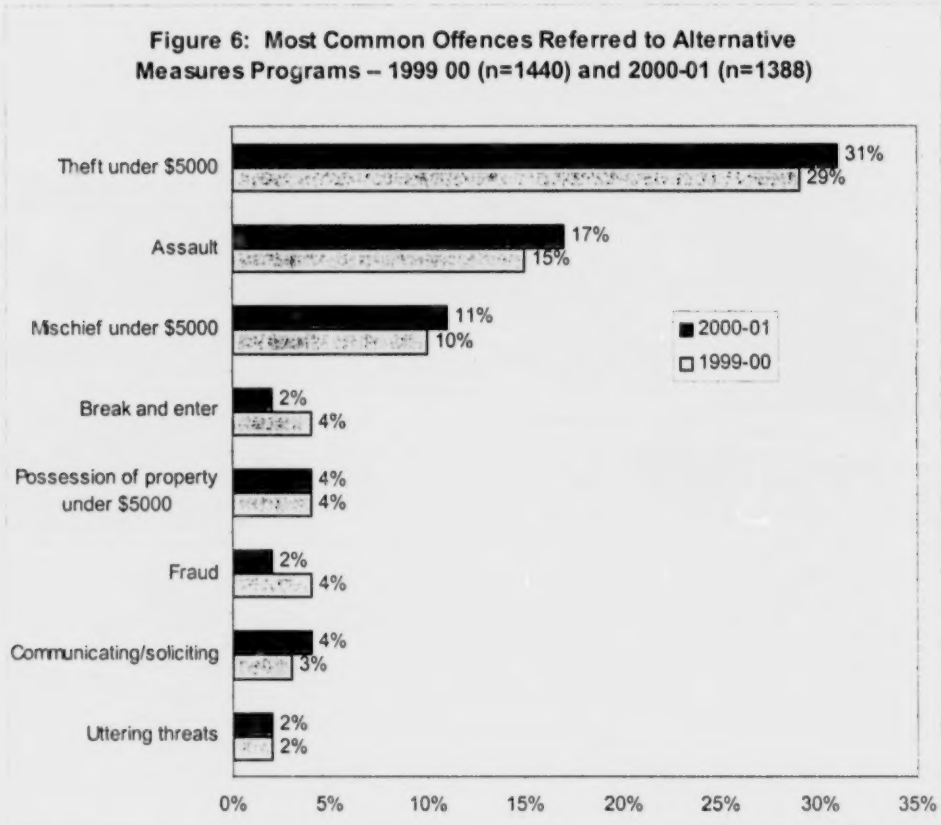
Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

In 1999-00 and 2000-01 the three offences referred to alternative measures most often were:

- theft under $5000 (29% and 31%)
- assault. (15% and 17%), and
- mischief under $5000 (11% and 10%.

As shown on Figure 5, other offences referred included communicating/soliciting, break and enter, fraud, possession of stolen property under $5000 and uttering threats.

Figure 5: Most common offences referred to alternative measures programs, 1999-00 (N=1440) and 2000-01 (N=1388)



Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

An examination of the number of specific charges referred to 2000-01 alternative measures compared to the total number of cases with findings of guilt from the 20000-01 Adult Court Survey may be warranted. This analysis may provide some insight into the percentage of cases currently being referred and the potential that exists for increasing referrals, assuming program capacity also increases.

A case is defined differently in the Adult Court Survey 2000-01[4] than in the Alternative Measures Database. However, the calculations will still provide a general idea of the volume of charges being referred to alternative measures in Saskatchewan.

Table 6 is based on the assumption that all pre- and post-charge cases referred to alternative measures would otherwise go through the criminal court system with guilty pleas. If this were true, in fiscal year 2000-01 less than a quarter of the theft charges were referred to alternative measures and less than a fifth of assault, mischief and possession of stolen property were referred. Further investigation into the policy and criteria for referral and types of cases referred should take place.

Table 6: Percent of total guilty cases referred to alternative measures programs (2000-01)

Specific charge	Total cases referred to alternative measures (AM database 2000-01 – pre- and post-charge)	Total Guilty Cases (Adult Court Survey 2000-01)	Percent of total cases
Theft	414	1301	24%
Assault	232	1759	12%
Mischief	146	687	18%
Break and enter	30	551	5%
Possess stolen property	61	421	13%
Fraud	31	572	5%

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety and Adult Court Survey, Canadian Centre of Justice Statistics

Victims

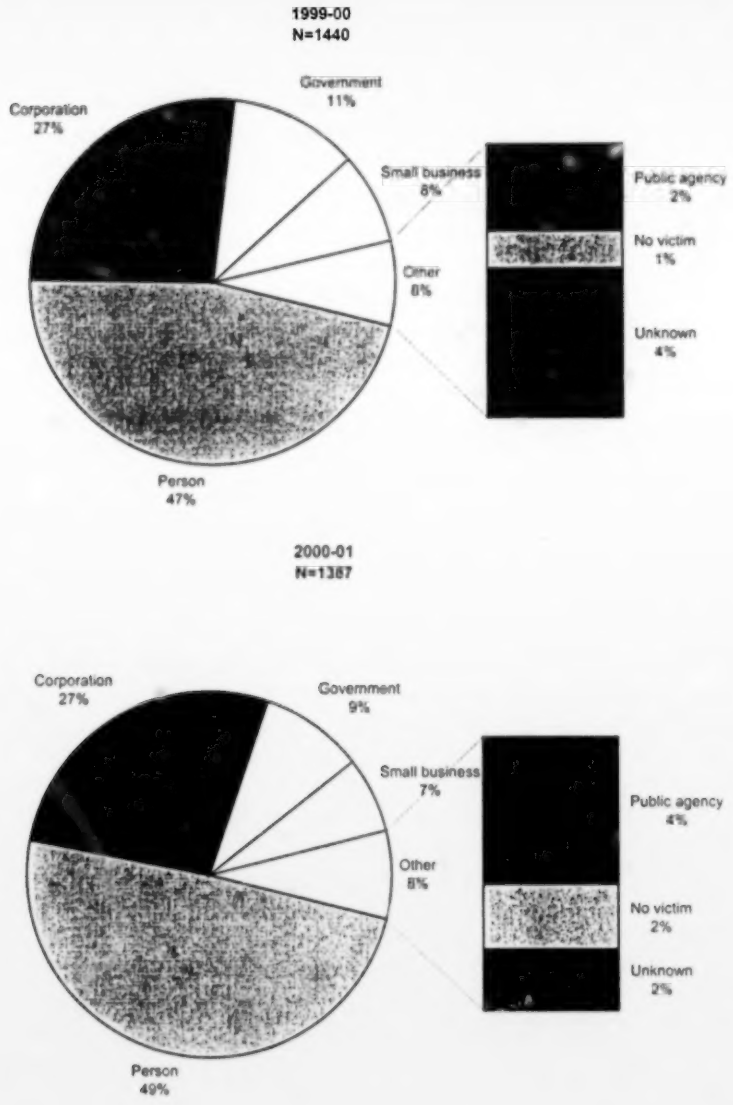
Although involvement of victims is a critical aspect of restorative justice programming, recording data on victims is one area where program personnel are least attentive. The information on victim type and participation in the intervention is an area of the Alternative Measures Form that requires greater attention to ensure consistent recording and reporting. Programs are asked to describe victims as persons, corporations, public agencies, small businesses, government and private dwellings. Although including the descriptor private dwelling was intended to help distinguish between persons victimized by violent crimes and victims of property crime, examination of the data suggests that this distinction was not achieved. Figure 7 shows person data as an aggregate of person and private dwelling.

Excluding victims where type is unknown (i.e., not stated and no victim), in both fiscal years:

- About half of the victims were persons (46% in 1999-00 and 49% in 2000-01).
- 27% were corporations.
- Approximately 10% were government (11% in 1999-00 and 9% in 2000-01).
- About 3% were public agencies (2% in 1999-00 and 4% in 2000-01).

[4] For the purpose of the Adult Court Survey a case is defined as an offender, one or more charge dealt with in one day and one or more victims. For the purpose of the Alternative Measures Database a case is defined as an offender, a charge and a victim.

Figure 6: Victim type in alternative measures referrals, 1999-00 and 2000-01



Source: Saskatchewan Justice and Saskatchewan Corrections and Public Safety Alternative Measures Database

The way in which victims are involved in resolving the case is very important. If involvement is viewed as a continuum, victims may have very little personal involvement or may become very involved with the offender, continuing after the resolution of the case. Some may not have direct contact with the facilitator or the offenders, choosing to work through a representative or by telephone. Some may choose to use a surrogate to attend a mediation or family group conference on their behalf or they may attend themselves.

The Alternative Measures Form asks facilitators to identify the different ways victims have been involved in the cases (Table 7). However, these data were not recorded consistently by all programs, as evidenced by the large amount of missing data (83% in 1999-00 and 73% in 2000-01). Victims may have had more than one type of participation.

Table 7: Victim participation in alternative measures programs, 1999-00 and 2000-01

Type of participation	1999-00			2000-01		
	Number of Cases	Percent of total cases	Percent of reported cases	Number of cases	Percent of total cases	Percent of reported cases
In person	81	6%	33%	139	10%	35%
By representative	69	5%	28%	106	8%	27%
By telephone	38	3%	15%	63	5%	16%
By letter	6	0.4%	2%	29	2%	15%
Victim did not participate	52	4%	21%	58	4%	7%
Missing data	1216	83%		993	72%	
TOTAL	1462			1388		

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

Excluding "unreported" data:

- About a third of the victims participated in the alternative measures response in person (33% in 1999-00 and 35% in 2000-01).
- Slightly more than a quarter used a surrogate victim or representative (28% in 1999-00 and 27% in 2000-01).
- About one fifth of the victims did not participate (21% in 1999-00 and 15% in 2000-01).

Although there is a large amount of missing data (90% in 1999-00 and 87% in 2000-01), examination of the percentage of cases with successfully completed agreements and type of victim participation is interesting (Table 8). Of reported cases, type of victim participation appeared to have little impact on the completion of the agreement. However, further examination of this issue is needed before any conclusions can be drawn.

Table 8: Agreements successfully completed and type of victim participation

	1999-00 Completion rate	2000-01 Completion rate
In person	98%	88%
By representative	100%	91%
By telephone	86%	92%
By letter	100%	82%
Victim did not participate	100%	85%
Participation data missing	90%	87%

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

The data in the rest of this section relate only to those cases closed in 1999-00 and 2000-01. It does not include data from Saskatoon Community Mediation Services.

Interventions

An analysis of the results of cases can only be conducted on cases that have been closed. In 1999-00, 1351 cases were closed; 1274 cases were closed in 2000-01.

Table 9: Cases closed, 1999-00 and 2000-01

Year	Reached agreement		Did not reach agreement		?		Total
	#	%	#	%	#	%	
1999-00	1084	80%	260	19%	7	0.5%	1351
2000-01	1054	83%	220	17%	--	--	1274

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

An immediate outcome of the alternative measures process is the extent to which agreements are reached. These agreements may include offender actions such as apologies, restitution to the victim, donation to charity or community service. Of closed adult cases, 80% (1084) reached agreement in 1999-00 and 83% (1054) reached agreement in 2000-01 (Table 9).

Of those closed cases reaching agreement, 40% (1999-00) and 35% (2000-01) involved Aboriginal offenders. This is slightly less than the percentage of referrals involving Aboriginal offenders (41% in 1999-00 and 43% in 2000-01).

Types of Interventions

Following the initial intake the caseworker determines the most appropriate type of intervention – for example, mediation, cautioning, outside referral, conferencing, diversion. No standard decision-making process has been established so a variety of procedures exist. Some agencies deliver only one type of intervention so the decision is simple. Some have developed their own assessment guidelines. Some agencies may use victim participation as a determining factor. Other factors may be caseworker knowledge and experience, police reports about the case and the needs, attitudes and behaviours of the offender. Further investigation into this issue is needed.

Although information on intervention type is missing in about 20% of the cases, mediation was used most often in both fiscal years (Table 10). In closed cases where the type of intervention is known:

- About three quarters of the cases in each fiscal year were dealt with using mediation (72% in 1999-00 and 77% in 2000-01).
- In 2000-01 the use of circles, such as family group conferences, community justice forums and healing circles, increased slightly from 2% in 1999-00 to 9%.

Table 10: Types of Interventions, 1999-00 and 2000-01 (closed cases)

Intervention	1999-00		2000-01	
	#	%	#	%
Mediation	754	56%	797	63%
Cautioning	167	12%	97	8%
Outside referral	86	6%	44	3%
Family group conference	21	2%	39	3%
Diversion	12	1%	2	0.2%
Other group conference	2	0.2%	6	0.5%
Community justice forum	1	0.1%	49	4%
Unknown	308	23%	240	19%

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

- Cautioning and diversion, considered less invasive and often conducted without victim involvement occurred in 17% of the closed cases in 1999-00 and 10% in 2000-01.
- Alternative measures service providers made referrals to other agencies in 8% of the closed cases in 1999-00 and 4% in 2000-01.

Cases reaching agreement

Of those adult cases reaching agreement, in 1999-00 91% (987) completed agreements successfully and in 2000-01 87% (919) completed agreements successfully (Table 11).

Table 11: Successful and unsuccessful completion of agreements reached in alternative measures programs, 1999-00 and 2000-01

Year	Agreement completed successfully		Agreement not completed successfully		?		Total
Adults							
	#	%	#	%	#	%	
1999-00	987	91%	96	9%	1	<1%	1084
2000-01	919	87%	118	11%	17	2%	1054

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

Cases not reaching agreement

As shown on Table 12 the reasons for cases not reaching agreement included:

- In about two thirds of the cases (69% in 1999-00 and 59% in 2000-01) the reason agreement could not be reached was related to the offender who could not be contacted, refused to participate or denied responsibility for the crime. Those cases in which the offender denied responsibility or refused to participate are ones that perhaps should not have been referred to alternative measures. Their refusal at the time the coordinator contacted them raises the question of whether these offenders understood the referral agreement they signed.

- In less than 2% of the cases the victim's unwillingness to participate resulted in the case being returned to the court. In approximately 15% of the cases where victim participation is known, the victim chose not to participate and in about 25% of the cases a surrogate victim or representative was used.

- In 23% of the cases in 1999-00 and 31% in 2000-01, the reasons were related to the diversion process. For example, the referral was not appropriate or the agency returned the referral to the Crown.

- 4% of the cases in 1999-000 and 2% in 2000-01 were returned because the charge was dismissed or withdrawn or the Crown vetoed the referral.

Table 12: Reasons for agreements not being reached in alternative measures programs, 1999-00 and 2000-01

Reason	Number of cases 1999-00	Number of cases 2000-01
Related to the offender		
Unable to make contact	124	81
Offender refused to participate	37	22
Offender denied responsibility	20	24
Offender reoffended		2
Related to the victim		
Victim refused to participate	3	5
Related to the diversion process		
Unable to reach agreement	2	5
Inappropriate referral	22	14
Agency returned referral	28	41
Transferred to another agency	9	9
Related to the criminal justice process		
Crown veto	5	2
Charge dismissed/withdrawn	3	3
Other		
Other reason	7	12
TOTAL	**260**	**220**

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

The agreements

A meta-evaluation conducted by Justice Canada[5] showed that as a result of offenders being encouraged to take responsibility for their actions, those that participated in restorative justice programs were significantly more likely to complete restitution agreements than those in the control group not participating in a restorative justice program. This should lead to greater victim satisfaction since these agreements often include compensation to victims as well as allowing victims input into the resolution of the case.

Table 13: Case outcomes from agreements (N=1084 in 1999-00 and N=1054 in 2000-01)

	1999-00		2000-01	
	# of cases	% of total cases	# of cases	% of total cases
Restitution to victim	241	22%	232	22%
Donation to charity	94	9%	77	7%
Community service	276	25%	327	31%
Apology to victim	395	36%	416	39%
Counselling sessions	163	15%	121	11%
Education sessions	267	25%	256	24%
Essay writing	26	2%	83	8%

Source: Alternative Measures Database, Saskatchewan Justice and Saskatchewan Corrections and Public Safety

[5] Justice Canada (2001), *The Effectiveness of Restorative Justice Practices: A Meta-Analysis.*

An agreement may include one or more outcomes. Examples of possible outcomes are payments or apologies to victims, community service, referrals to counselling or educational sessions and writing essays (Table 13). In over a third of the cases offenders offered apologies to the victim. In approximately one quarter of the cases, agreements included community service, education sessions and restitution to the victim.

The following data are based on the cases that reached agreement in 1999-00 (1084) and 2000-01 (1054). It is important to note that 80% and 83% of the agreements in those cases were completed successfully.

Payment to victims

- 22% of the cases in both years had victim restitution in their agreements.
- $96,875.70 was paid to victims in 1999-00 through 226 agreements, an average of $428.65 per agreement, and $70,687.28 was paid in 2000-01 through 201 agreements, an average of $351.68 per agreement.
- There were some agreements in which the payment amount was not stated.

Donations to charity

- 9% (1999-00) and 7% (2000-01) of the cases reaching agreement involved donations to charity.
- Where donation amounts were stated, in 1999-00 $15,795 was donated to non-profit organizations through 88 agreements, and in 2000-01 $24,117 was donated through 75 agreements.

Community service

- 25% of the cases reaching agreement in 1999-00 and 31% in 2000-01 involved community service commitments.
- Sometimes adult offenders provided service directly to victims. In 1999-00 they completed 477.4 hours through 20 agreements and in 2000-01 they completed 737.5 hours through 22 agreements.
- Adult offenders completed 4107.5 community service hours in 1999-00 and 4487.5 hours in 2000-01.

Apology to the victim

- 36% of the cases reaching agreement in 1999-00 and 39% in 2000-01 involved the offender agreeing to make a formal apology to the victim.

Essay writing

- 2% of the cases reaching agreement in 1999-00 and 8% in 2000-01 involved the offender agreeing to write an essay.

Counselling and education sessions

- 15% of the cases reaching agreement in 1999-00 and 11% in 2000-01 involved the offender agreeing to attend counselling sessions.

- About a quarter of the cases (25% in 1999-00 and 24% in 2000-01) reaching agreement involved the offender agreeing to attend education sessions, including STOPLIFT (shoplift prevention), Prostitution Offender Intervention Programs and alcohol and drug treatment programs.

- About a fifth of the cases reaching agreement in both years (18% in 1999-00 and 17% in 2000-01) involved the offenders agreeing to attend STOPLIFT sessions.

- 5% of the cases reaching agreement in 1999-00 and 4% in 2000-01 involved the offender agreeing to attend Prostitution Offender Intervention Programs.

Differences in outcomes in cases involving Aboriginal and non-Aboriginal offenders

- Aboriginal offenders have payment of money as part of their agreements less often than non-Aboriginal offenders. Research shows that Aboriginal people have a lower income than non-Aboriginal and more often than non-Aboriginal people may be unable to repay an amount to the victim or make a donation to charity.

    - In 1999-00 241 cases had restitution as part of the agreements. Of those, 30% involved Aboriginal offenders and 63% involved non-Aboriginal offenders. In 2000-01 26% of the 232 cases involved Aboriginal offenders; 66% involved non-Aboriginal.

    - In 1999-00, 94 cases had donations to charity as part of the agreements. Of those, 9% involved Aboriginal offenders; 82% involved non-Aboriginal offenders. In 2000-01, of the 77 cases, 9% involved Aboriginal offenders and 81% non-Aboriginal offenders.

- No pattern exists in agreements with community service commitments. In 1999-00, 51% of the agreements with community service commitments were with Aboriginal offenders; in 2000-01, 58% of these agreements were with non-Aboriginal offenders.

- Apologies to victims were part of the agreements more often with non-Aboriginal offenders. In 1999-00 35% of cases with Aboriginal offenders and 58% of cases with non-Aboriginal offenders contained apology outcomes. Results were similar in 2000-01.

- The number of agreements containing commitments to attend counselling sessions were similar for both years at approximately 42% for Aboriginal offenders and 54% for non-Aboriginal offenders.

- Education sessions were more often agreed to for non-Aboriginal offenders (57% and 65% for non-Aboriginal offenders compared to 40% and 31% for Aboriginal offenders in 1999-00 and 2000-01 respectively for each group).

Section 3: In Summary . . .

The use of adult alternative measures programs has expanded greatly since 1995. Programs are delivered across the province by a wide variety of community-based organizations, tribal and band councils and service providers.

The majority of programs use standardized data collection processes to report program activity. Some programs have not submitted data for inclusion in this report, but each year reporting procedures are improving.

Referrals

The majority of charges were referred after the charge was laid (post-charge). Almost two-thirds of the charges were for property crime; over one-fifth were against person offences. The three most common offences were theft under $5000, assault and mischief.

Approximately half of the offenders were Aboriginal; nearly two-thirds were male; slightly more than half were between 18 and 25 years, inclusive; and, slightly more than half were employed full-time or part-time.

Victims

Agencies were least rigorous in completing victim information, leaving large data gaps.

For those cases where victim type is known, almost half the cases the victim of crime was a person. Other victims included corporations, government, small businesses and public agencies.

In those cases where victim participation is known, victims participated in person in about a third of the cases and through a representative in about a quarter. Victim participation did not appear to have an impact on the success of the measure; however, the majority of offenders believe victim involvement has a positive impact on their response to the intervention. Further investigation into this issue is required.

- According to the database, 2283 referrals were made to adult alternative measures programs in 1999-00; 2226 were made in 2000-01. However, program reports showed that 552 referrals made in 2000-01 were not entered on the database, bringing the total number of referrals that year to at least 2778.
- 85% of the referrals were made post-charge.
- 63% (1999-00) and 62% (2000-01) of the referrals were for property crimes.
- 21% (1999-00) and 23% (2000-01) of the referrals were for against person offences.
- The three most common offences in both fiscal years were theft under $5000 (approximately 30%), assault (approximately 16%) and mischief (approximately 10%).
- Excluding unknowns, 46% (1999-00) and 49% (2000-01) of the victims were persons; 27% were corporations and about 10% were government..

Interventions

Of those cases where the type of intervention is known, mediation was used in almost three-quarters of the cases. Other interventions included cautioning, diversion, outside referrals and circles. In 2000-01 the use of circles, such as family group conferences, community justice forums and healing circles, increased from 2% of closed cases in 1999-00 to 9%.

➜ Excluding unknowns, mediation was selected as the type of intervention in 72% (1999-00) and 77% (2000-01) of the closed cases.

Of those cases reaching agreements about 9 in 10 were completed successfully. Reasons for not completing the agreement were related to the:

- offender (e.g., unable to contact)
- victim (e.g., refuse to participate)
- diversion process (e.g., inappropriate referral)
- criminal justice process (e.g., Crown veto).

➜ Of cases closed (1351 in 1999-00 and 1274 in 2000-01), 80% and 83% reached agreements.

➜ Of those cases reaching agreement 91% (1999-00) and 87% (2000-01) were completed successfully.

Effectiveness

An examination of program reports shows that all programs are meeting their objectives to some extent. Most programs are operating at capacity and will require further resources to accept more referrals.

➜ The majority of the reasons for not reaching agreements were offender-related and included:
- unable to contact the offender (47% in 1999-00 and 37% in 2000-01)
- offender refused to participate (14% in 1999-00 and 10% in 2000-01)
- offender denied responsibility (8% in 1999-00 and 11% in 2000-01)

Three immediate outcomes of alternative measures programs that indicate a high level of success are:

- per cent of cases reaching agreements
  Of closed cases, 8 in 10 reached agreements.

- per cent of cases completing agreements successfully
  Of those cases reaching agreement, 9 in 10 completed agreements successfully.

- satisfaction of participants.
  A pilot evaluation of the perceptions of victims and offenders who had participated in mediation showed that participants generally found the process fair and helpful:
  - *All offenders agreed that they had a better understanding of how their actions affected the victims; the majority said that they felt forgiven for what they had done and could make a fresh start.*

➜ $96,875.70 was paid to victims through alternative measures agreements in 1999-00 and $70,687.29 was paid in 2000-01. $15,795 was donated to non-profit organizations in 1999-00 and $24,117 was donated in 2000-

- *The majority of the victims were satisfied with the way the agreement was reached. The majority believed that the offender understood how they had been affected and that they had received what they needed from the mediation. All said that the mediation process was better than having the offender go to court.*

Although there is some debate about the use of recidivism as a measure of effectiveness, Justice Canada conducted an analysis of recidivism in three Saskatchewan programs as part of a national study. It showed that alternative measures programs were having an impact on reoffending.—"significantly reduced the likelihood of offenders committing another offense following participation in the program . . . the analysis was able to clearly measure a quantifiable outcome . . . demonstrating some positive impacts are being made on rates of crime and incarceration in Aboriginal communities.[6]"

In Conclusion . . .

This is the first report on data from Saskatchewan's Adult Alternative Measures Programs. Although more work needs to be done to ensure consistent data collection and develop and implement a program evaluation framework, this report shows victims involved and receiving restitution, offenders taking responsibility for their actions and communities participating in the delivery of justice measures. There is no question that these programs are meeting the aims listed in the alternative measures policy document:

- Increase the offender's accountability and responsibility for criminal actions
- Promote the involvement of victims in the process
- Protect society by deterring accused persons from further criminal behaviour
- Enhance the community's participation in resolving conflicts
- Involve the community in addressing the crime, and
- Protect the interests of society.[7]

---

[6] Justice Canada (2000), *Final Evaluation Aboriginal Justice Strategy*

[7] Saskatchewan Justice (2002), *Alternative Measures Policies*, pg.1

Appendix A: Alternative Measures Policies

This Appendix contains the text from the document **Alternative Measures Policies** published by Community Services Branch, Saskatchewan Justice, January 2001.

Table of Contents

Preface..... 1

Introduction..... 3

Legislation..... 6

Diversion Policy Guidelines..... 8

Saskatchewan Justice Diversion Program Policy 9

Saskatchewan Social Services Young Offender Diversion Program Policy..... 12

Saskatchewan Environment and Resource Management Alternative Measures Policy..... 16

Federal Diversion Policy Guidelines.....20

Preface

Over the past several years, many agencies and justice organizations have developed alternative measures programs as a way of dealing with conflict. As a result, both the federal and provincial governments have developed policies and guidelines regarding the use of alternative measures and the development of alternative measures programs. This booklet introduces the concept of alternative measures and provides the legislation and policies that govern the use of alternative measures in Saskatchewan.

Outline of this Booklet

The Introduction briefly describes the types of alternative measures that are commonly used in Saskatchewan.

Section 2 outlines provisions in the *Criminal Code* and the *Young Offenders Act* that authorize the provinces to develop alternative measures programs.

Section 3 provides the Ministerial Orders and the attached policies that authorize alternative measures programs. These include:

- The Ministerial Order and attached *Saskatchewan Justice Diversion Program Policy* (1996), which guide alternative measures programs for adults;
- The Ministerial Order and attached *Saskatchewan Social Services Young Offender Diversion Program Policy* (1997), which guide alternative measures programs for youths;
- The *Saskatchewan Environment and Resource Management Alternative Measures Policy* (revised March 9, 1999), which guide conservation officers in the process of making referrals to alternative measures programs; and
- The Ministerial Order and attached *Federal Diversion Program Policy* (1997), which guide the actions of federal prosecutors.

Preface

The Role of Community Services Branch

Community Services Branch is responsible for supporting community-based justice programs by assisting with community development and the community-based approach to justice. The mission of the Branch is: *"We collaborate with and support communities to develop their capacity to deliver culturally sensitive justice services which promote community owned responses to crime, encourage family participation, meet the needs of victims and hold offenders accountable and fosters positive change".*

In this capacity, the Community Services Branch offers developmental assistance and ongoing support for community justice and alternative measures programs. The Branch offers services such as advice, consultation with other agencies and organizations, policy and research support, and referrals to other agencies or departments.

The programs that are supported by the Community Services Branch may also receive funding or other support from Justice Canada and Saskatchewan Social Services. These organizations have important roles to play in delivering alternative measures programs.

For more information about the work of the Community Services Branch or the material in this booklet, please feel free to contact us at:

Community Services Branch
Saskatchewan Justice
10th Floor
1874 Scarth St.
Regina, SK S4P 3V7
Phone: (306) 787-5096
Fax : (306) 798-0037
E-mail: commserv@justice.gov.sk.ca

Section 1: Introduction

"Alternative measures" refers to programs in which adults and youth who are accused of a criminal offence take responsibility for their behavior by participating in a community-based program. These programs attempt to balance the needs of victims, the accused, and their communities while ensuring that society is protected. They offer accused persons a chance to take responsibility for their behavior and to address the harm they have committed.

Alternative measures are a way to address crime in conjunction with the present criminal justice system. These programs address the criminal actions of the accused while preserving their dignity and requiring them to be accountable for their behavior. It attempts to make things right by taking a problem-solving approach to crime which emphasizes forgiveness and healing while helping to repair relationships between the victim, the accused and the community. They are consistent with the move towards a responsive justice system that tries to deal with criminal behavior in a proactive manner. They aim to:

- increase the offender's accountability and responsibility for criminal actions;
- promote the involvement of victims in the process;
- protect society by deterring accused persons from further criminal behavior;
- enhance the community's participation in resolving conflicts;
- involve the community in addressing the crime; and
- protect the interests of society.

There are many types of alternative measures. Some of the most common types include:

- victim-offender mediation, in which victims and accused meet with a trained mediator who assists in resolving the conflict. Mediation may involve surrogate victims if the real victim is unable or unwilling to participate;
- mediation circles, in which the victim, the accused and members of the community meet to work out an agreement that satisfies the victim, meets the needs of the accused, and gives members of the community a role in helping both parties; and

- diversion, in which offenders are referred to counseling, educational programs, addictions treatment, or other programs that may help them deal with personal issues.

The development of alternative measures has been influenced by several factors, including:

- the restorative justice movement;
- the desire of Aboriginal people for a justice system that is responsive to their unique needs; and
- the realization that communities can sometimes deliver a more effective form of justice than the centralized criminal justice system.

Youth alternative measures have been operating in Canada since 1983, and in Saskatchewan since 1985. Both adult and youth programs have usually been delivered by community-based agencies.

Alternative measures programs acknowledge the need for effective, efficient ways of resolving disputes that meet the unique needs of Aboriginal people. Alternative measures programs involve communities in developing culturally sensitive services that promote healing and reconciliation between victims, offenders, and communities.

In 1995, Cabinet approved the restorative justice strategy for Saskatchewan. This strategy includes the following goals:

- enhancing community safety and protection;
- reserving the formal justice system for the most serious of matters;
- developing alternative measures for less serious crime;
- strengthening communities by involving victims, offenders, government and community members in a balanced approach to criminal behavior;
- reducing crime by increasing offender accountability to victims and communities; and
- increasing public trust and public perception of the fairness of the criminal justice system.

Introduction

Cabinet also approved the restorative youth justice strategy. The goals of this strategy are to:

- enhance public understanding about the incidence and nature of crimes committed by youth;
- minimize the involvement of young people in the formal justice system;
- recognize the critical role of Aboriginal people in delivering services; and
- more effectively use the judicial process for cases involving young offenders.

The goals of the restorative justice strategy and the restorative youth justice strategy are also consistent with Saskatchewan's Aboriginal Justice Strategy (1995), which aims to involve the Aboriginal community in developing justice initiatives that are culturally sensitive, responsive to community needs, holistic in service provision, and focus on empowering the community. These objectives will be achieved by focusing on crime prevention, crime reduction, improving race relations, and building bridges within the justice system.

Section 2: Legislation

In September, 1996, a number of amendments were made to the *Criminal Code*. Bill C-41 authorized the use of community-based sentencing alternatives and emphasized that incarceration should be used as a last resort. The use of alternative measures is authorized in section 717 (1) of the *Criminal Code*, which states,

717. (1). Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:

(a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the Lieutenant Governor in Council of a province;

(b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;

(c) the person, having been informed of alternative measures, fully and freely consents to participate therein;

(d) the person has, before consenting to participate in alternative measures, been advised of the right to be represented by counsel;

(e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;

(f) there is, in the opinion of the Attorney General or the Attorney General's agency, sufficient evidence to proceed with the prosecution of the offence; and

(g) the prosecution of the offence is not in any way barred at law.

(2)Alternative measures shall not be used to deal with a person alleged to have committed an offence if the person

(a) denies participation or involvement in the commission of the offence; or

(b) expresses the wish to have any charge against the person dealt with by the court.

A similar provision respecting young offenders is found in Section 4 of the *Young Offenders Act*, which states,

"4(1) Alternative measures may be used to deal with a young person alleged to have committed an offence instead of judicial proceedings under this Act only if:

(a) the measures are part of a program of alternative measures authorized by the Attorney General or his delegate or authorized by a person, or a person within a class of persons, designated by the Lieutenant Governor in Council of a province;

(b) the person who is considering whether to use such measures is satisfied that they would be appropriate, having regard to the needs of the young person and the interests of society;

(c) the young person, having been informed of the alternative measures, freely and fully consents to participate therein;

(d) the young person has, before consenting to participate in the alternative measures, been advised of his right to be represented by counsel and been given a reasonable opportunity to consult with counsel;

(e) the young person accepts responsibility for the act or omission that forms the basis of the offence he is alleged to have committed;
(f) there is, in the opinion of the Attorney General or his agent, sufficient evidence to proceed with the prosecution of the offence; and,
(g) the prosecution of the offence is not in any way barred at law".

Both sections 717(2) of the *Criminal Code* and section 4(2) of the *Young Offenders Act* state that a person can not be referred to an alternative measures program if they deny committing the offence or express the wish to have the matter dealt with in court.

Although the *Criminal Code* and the *Young Offenders Act* give legislative authority for alternative measures programs, it is the responsibility of the provinces to develop and regulate these programs. In Saskatchewan, the Department of Social Services is responsible for programs for young offenders, while Saskatchewan Justice is responsible for adult programs. Both Departments have authorized these programs with Ministerial Orders and Diversion Program Policies. These policies are included in the next section, which also includes the *Federal Diversion Policy Guidelines* (1997) and the *Saskatchewan Environment and Resource Management Alternative Measures Policy* (revised March 9, 1999).

Section 3: Diversion Policy Guidelines

This section includes the Ministerial Orders and policies that authorize the use of alternative measures in Saskatchewan. These include the *Saskatchewan Justice Diversion Program Policy* (1996), the *Saskatchewan Social Services Diversion Program Policy* (1997), the *Federal Diversion Policy Guidelines* (1997), and the *Saskatchewan Environment and Resource Management Alternative Measures Policy* (revised March 9, 1999).

The *Saskatchewan Justice Diversion Program Policy* (1996) applies to alternative measures programs for adults while the *Saskatchewan Social Services Diversion Program Policy* (1997) applies to alternative measures programs for youths.

The Federal Diversion Policy Guidelines (1997) guide the actions of federal prosecutors. The *Saskatchewan Environment and Resource Management Alternative Measures Policy* (revised March 9, 1999) guides conservation officers who are considering referring an accused person to an alternative measures program.

Saskatchewan Justice Diversion Program Policy (1996)

1. Purpose:

Diversion programs provide an alternative to the traditional court process for adults facing criminal charges.

Programs offer offenders opportunities to effect reparation to victims and community within a structured, publicly accountable program which is sensitive to cultural diversity.

2. Authority:

2.1 Saskatchewan Justice provides operating standards for approved diversion programs consistent with Section 717 of the *Criminal Code*.

2.2 Referrals are made pre-charge and post-charge upon review by a crown prosecutor.

3. Eligibility Criteria:

Victim participation is encouraged but not a pre-requisite for program eligibility, except in mediation. Victim participation is voluntary.

3.1 Offender:

- Adult
- Sufficient evidence exists to support a criminal charge
- Prosecution is not barred at law
- Acknowledgement of responsibility for behaviour
- Diverted not more than twice in the last three years
- No failed diversion in the last six months
- No substantial record of similar offences or recent charges

3.2 Offences to be excluded:

- Incident involved the use of or threatened use of a weapon
- Violence against the person cases (adult or child), where crown elects to proceed by way of indictment
- Child sexual abuse cases
- Sexual assault cases, where crown elects to proceed by way of indictment
- Perjury
- Driving while disqualified
- *Criminal Code* driving offences where alcohol was a contributing factor
- Federal offences other than *Criminal Code**
- Family violence cases

*The availability of diversion respecting these offences determined by the federal Department of Justice.

4. Exclusionary Criteria:

4.1 Offender refusal to participate.

4.2 Offence or offender are excluded.

4.3 Referral agent (police, crown) does not think that the offender or offence is suitable for the program.

4.4 Agency administering the program does not think the offender or offence is suitable.

5. Diversion Options:

(Where available and accessible in a reasonable period of time)

- Restitution/compensation in cash or in kind
- Personal service work for victim
- Community service work
- Mediation (see attached policy)
- Donation to charity
- Referral to specialized program (life skills, crime prevention, Stoplift)
- Referral for counseling/treatment (drug/alcohol, health, mental health, social service agency)
- Aboriginal cultural activities
- Other reasonable agreements
- Some combination of the above

In addition to meeting the diversion program guidelines, mediation programs must demonstrate the following:

1. Purpose:

Mediation is a particular type of diversion. Victims and offenders are provided an opportunity to meet and effect a reconciliation and reparation.

Programs must involve victims and offenders through a process of mediation and reparation.

2. Authority:

Mediators must have a combination of theoretical and practical training specific to criminal justice mediation, as approved by Mediation Services.

3. **Victim Participation:**

Victim participation is a pre-requisite for eligibility in the program.

Victim participation is strictly voluntary. Refusal by the victim excludes participation in the program.

Special consideration is given in favor of cases where there is an on-going relationship between the victim and offender, in recognition that there is an enhanced likelihood for a positive outcome and reduction of future incidents.

4. **Eligibility Criteria:**

Same as diversion.

5. **Exclusionary Criteria:** Same as diversion, with the addition of:
   - Victim or offender refuse to participate.
   - Mediator does not think that mediation would be suitable.

Minister of Justice
and Attorney General

SASKATCHEWAN

Legislative Building
Regina, Saskatchewan S4S 0B3

MINISTER'S ORDER

Section 717 of the *Criminal Code* (Canada) provides, in part, as follows:

> **"717.(1) Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:**
>
> **(a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the lieutenant governor in council of a province;**
> **(b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;**
> **(c) the person, having been informed of the alternative measures, fully and freely consents to participate therein;**
> **(d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;**
> **(e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;**
> **(f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and**
> **(g) the prosecution of the offence is not in any way barred at law."**

I, John T. Nilson, Q.C., Minister of Justice and Attorney General for the Province of Saskatchewan, pursuant to section 717 of the *Criminal Code* (Canada), do hereby authorize adult alternative measures programs which are consistent with the program criteria attached hereto as Schedule "A".

I do hereby further authorize the Deputy Minister of Justice and Deputy Attorney General for the Province of Saskatchewan as my delegate for the purpose of amending the program criteria set out in the attached Schedule "A" including with respect to its application to classes of cases or specific cases; for setting operating standards for adult alternative measures programs consistent with the program description authorized above; and for approving individual adult alternative measures programs.

Dated at the City of Regina, Saskatchewan, this 30th day of September, 1996.

John T. Nilson

Minister of Justice and Attorney General

Saskatchewan Social Services Young Offender Diversion Program Policy (1997)

1. Purpose:

Diversion programs provide an alternative to the traditional court process for youth facing criminal charges.

Programs offer offenders opportunities to effect reparation to victims and community within a structured, publicly accountable program which is sensitive to cultural diversity.

2. Authority:

2.1 Saskatchewan Justice approves alternative measures programs.

2.2 Saskatchewan Social Services provides operating and monitoring standards for approved diversion programs.

2.3 Referrals are pre-charge or post-charge upon review by a crown prosecutor.

3. Eligibility Criteria:

Victim participation is encouraged, but not a pre-requisite for program eligibility, except in mediation. Victim participation is voluntary. With the approval of the victim, a surrogate may be used when appropriate.

3.1 Offender:

- Youth as defined by the *Young Offenders Act*;
- Sufficient evidence exists to support a criminal charge;
- Prosecution is not barred at law;
- Youth is referred to the program by a Crown Prosecutor, having assessed the circumstances to ensure the referral is not barred by law or policy;
- Acknowledgement by youth of responsibility for behaviour;
- Youth chooses to participate, having been advised of their right to counsel or having consulted counsel.

3.2 Offences to be excluded:

- Incidents involving the use of or threatened use of a weapon;
- Violence against the person cases (adult or child), (where the crown elects to proceed by way of indictment), includes offenses such as murder, attempted murder, or sexual assault;
- Child sexual abuse cases;
- Perjury;
- Driving while disqualified;

- All *Criminal Code* driving offenses with alcohol or drugs a contributing factor;
- Any federal offence other than *Criminal Code* *;
- All family violence cases.

*The availability of alternative measures respecting these offenses determined by the federal Department of Justice.

4. Exclusionary Criteria:

4.1 Offender refusal to participate;

4.2 Offence is excluded or the offender is excluded as a result of significant failure to complete previous diversions or the existence of other significant charges that call into question the appropriateness of alternative measures;

4.3 Referral agent (police, Crown) does not think that the offender or offence is suitable for the program;

4.4 Agency administering the program does not think the offender or offence is suitable;

4.5 An alternative measures program is not available for the area.

5. Diversion Options:

(Where available and accessible in a reasonable period of time)

- Restitution/compensation in cash or in kind
- Personal service work for victim
- Community service work
- Mediation (see attached policy)
- Family Group Conferences/Community Accountability Conferences (see attached policy)
- Donation to a charity
- Referral to a specialized program (e.g.: life skills, crime prevention, Stoplift)
- Referral for counseling/treatment (drug/alcohol, health, mental health, social services agency)
- Participation in Aboriginal cultural activities
- Other reasonable agreements
- Some combination of the above

Diversion options may be delivered, with approval, by a range of service providers including citizen volunteers operating under the auspices of a Community Justice Committee, community based organizations and persons in private practice.

Saskatchewan Social Services Young Offender Diversion Program Policy (1997)

Within the context of the *Young Offender Diversion Program Policy* (1997), mediation programs adhere to the following policy:

1. **Purpose:**

   Mediation is a particular type of diversion. Victims and offenders are provided an opportunity to meet and effect a reconciliation and reparation.

   Programs must involve victims and offenders through a process of mediation and reparation. Where appropriate, and with the permission of victims, a surrogate may be used in the mediation process.

2. **Authority:**

   Mediators must have a combination of theoretical and practical training specific to criminal justice mediation as required by Saskatchewan Social Services.

3. **Victim Participation:**

   Victim participation is a pre-requisite for eligibility in the program.

   Victim participation is voluntary. Refusal by the victim to participate or to allow for a surrogate excludes mediation as a diversion option for the offender(s).

   Special consideration is given in favour of cases where there is an on-going relationship between the victim and offender, recognizing there is an enhanced likelihood for a positive outcome and reduction of future incidents.

4. **Eligibility Criteria:**

   Refer to the *Young Offender Diversion Program Policy* (1997).

5. **Exclusionary Criteria:**

   Same as diversion, with the addition of:
   - Refusal of the offender to participate;
   - Refusal of the victim to participate and does not approve the use of a surrogate;
   - Mediator does not believe mediation would be suitable.

Saskatchewan Social Services Young Offender Diversion Program Policy (1997)

Within the context of the *Young Offender Diversion Program Policy* (1997), family group conferences, alternatively known as community accountability conferences, adhere to the following policy:

1. **Purpose:**

   Family Group Conferences (FGC) or Community Accountability Conferences (CAC) are a particular type of diversion. Victims, offenders, their families and significant others, such as extended family members and community members who have an interest in the outcome, or are affected by the crime, are provided an opportunity to meet and attend to the material and emotional effects resulting from and related to the incident.

   Programs involve participants in a process of healing, reconciliation and consensus decision-making. They focus on condemning criminal actions, rather than the offender, and serve to reintegrate offenders into the community with the support of an informed community of care.

2. **Authority**

   Family Group Conference coordinators must have a combination of theoretical and practical training specific to criminal justice mediation as required by Saskatchewan Social Services.

3. **Victim Participation**

   Victim participation is a pre-requisite for eligibility in the program. Victim participation is voluntary.

   Victims may be personally represented, appear with supporters or, with their permission, be represented by a surrogate.

   Special consideration is given in favor of cases where there is an on-going relationship between the victim and offender, recognizing there is an enhanced likelihood for a positive outcome and reduction of future incidents.

4. **Eligibility Criteria:**

   As defined in the *Young Offender Diversion Program Policy* (1997).

5. **Exclusionary Criteria:**

   Same as diversion, with the addition of:
   - Refusal of the offender to participate;
   - Refusal of the victim to participate or to be represented by a surrogate;
   - The circumstances of the case are not appropriate for family group conferencing.

Saskatchewan

Saskatchewan
Justice

1874 Scarth Street
Regina, Canada
S4P 3V7

MINISTER'S ORDER

Section 4 of the *Young Offenders Act* (Canada) provides in part, as follows:

> "4.(1) Alternative measures may be used to deal with a young person alleged to have committed an offence instead of judicial proceedings under this Act only if
>
> (a) the measures are part of a program of alternative measures authorized by the Attorney General or his delegate or authorized by a person, or a person within a class of persons, designated by the Lieutenant Governor in Council of a province;
> (b) the person who is considering whether to use such measures is satisfied that they would be appropriate, having regard to the needs of the young person and the interests of society;
> (c) the young person, having been informed of the alternative measures, fully and freely consents to participate therein;
> (d) the young person has, before consenting to participate in the alternatives measures, been advised of his right to be represented by counsel and been given a reasonable opportunity to consult with counsel;
> (e) the young person accepts responsibility for the act or omission that forms the basis of the offence that he is alleged to have committed;
> (f) there is, in the opinion of the Attorney General or his agent, sufficient evidence to proceed with the prosecution of the offence; and
> (g) the prosecution of the offence is not in any way barred by law."

I, John T. Nilson, Q.C., Minister of Justice and Attorney General for the Province of Saskatchewan, pursuant to section 4 of the *Young Offenders Act* (Canada), do hereby authorize youth alternative measures programs which are consistent with the program criteria attached hereto as Schedule "A".

I do hereby further authorize the Deputy Minister of Justice and Deputy Attorney General for the Province of Saskatchewan as my delegate for the purpose of amending the program criteria as set out in the Attached Schedule "A" including with respect to its application to classes of cases or specific cases; for setting general program standards for youth alternative measures programs consistent with the program description authorized above; and approving individual youth alternative measures programs.

Dated at the City of Regina, Saskatchewan, the 24th day of February, 1997.

John T. Nilson

Minister of Justice
and Attorney General

Saskatchewan Environment and Resource Management Alternative Measures Policy (revised March 9, 1999)

I. Authority

- *Young Offenders Act* (Canada), Section 4
- *Criminal Code of Canada*, Section 717
- Minister of Justice Order dated September 30, 1996
- Federal Minister of Justice Order dated August, 1997

II. Purpose

To provide an alternative to traditional prosecution and/or court processes for offenders facing charges laid by conservation officers.

III. General Application

It is the duty of the Attorney General's Agent (Crown Prosecutor) to determine the appropriateness of alternative measures. Giving consideration to an offender's age, character, history and rehabilitative prospects, a conservation officer may recommend that it would be appropriate to use measures alternative to traditional prosecution. These measures provide offenders an opportunity to effect reparation to victims and/or the community within structured, publicly accountable forums.

The alternative measures program is not intended to be available for every offender and every offence. Rather, it is an acknowledgement that in some cases, because of the nature and circumstances of the offence and the offender, the public interest would be better served by a resolution outside of the traditional criminal process. The objective of alternative measures programs is to have the offender accept responsibility for the offence without going through the formal court process. It is essential, therefore, that the offender takes responsibility for his actions.

IV. Procedure

1. Investigate the offence following established investigative procedures. If possible, obtain a warned statement from the accused. Do not advise the accused that you are considering alternative measures, as this may jeopardize the admissibility of a warned statement.

2. When the investigation is complete and there is sufficient evidence to support a charge, examine the eligibility criteria to determine whether the accused qualifies for the alternative measures program. The program is generally aimed at offenders without substantial records of resource or environmental offences. Both the circumstances of the offender and the offence should be considered.

2.1 The Offender

- Acknowledgement of responsibility for behavior
- No substantial record or recent charges of resource or environmental offences
- No failed diversion in the last 6 months

2.2 The Offence

Existence of any of the following circumstances will preclude diversion:

- All hunting offences where alcohol was a contributing factor;
- Where the conduct demonstrated sophisticated planning (for example, the offence was part of an ongoing illegal enterprise);
- Offences involving the killing, possessing, capturing, injuring or trafficking in wild species at risk;
- Where the victim (if applicable) does not consent to alternative measures.

In addition to the factors outlined above, the case must satisfy the eligibility criteria established under the *Saskatchewan Justice Diversion Program Policy*, or, for federal offences other than *Criminal Code*, the *Federal Guidelines for Alternative Measures*.

3. Consult the local Crown Prosecutor. Referrals to the diversion program are made pre-charge or post-charge upon review by a Crown Prosecutor. If pre-charge, giving consideration to the statute of limitations period, the prosecutor will advise whether an information should be sworn at this time. The following diversion options may be available and should be considered:
   - Restitution/compensation in cash or in kind
   - Personal service work for the victim
   - Community service work (resource or environment related)
   - Donation to a charity (i.e. SaskTip or other suitable natural resource related charity)
   - Referral to a specialized program (i.e. SAFE)
   - Aboriginal cultural activities
   - Mediation
   - Other reasonable agreements
   - A combination of the above.

4. Interview the accused and advise him that the Crown is considering alternative measures. Explain the program, outlining the diversion options available to him (i.e. completion of a SAFE course).

5. The accused must fully and freely consent to participate in the alternative measures program. Before consenting, he must be advised of the right to be represented by counsel.

6. If the accused consents to participate, complete the Allegation and Agreement To Refer To Alternative Measures form (EB10-01). Forward the form to the Crown Prosecutor for review and endorsement.

7. Upon receiving signed approval from the Prosecutor, the case may proceed to Alternative Measures. The designated Resource Area Alternative Measures coordinator will refer the case to the appropriate diversion option. This may include a community justice committee, Mediation Services (Saskatchewan Justice), an Alternative Measures Provider or simply an Alternative Measures Agreement (using the SERM Alternative Measures Agreement form EB10-02). ***Note: If the accused is a member of a First Nation, the coordinator will consult with the appropriate Tribal Council Justice Committee (See Appendix).**

8. Upon completion of the Alternative Measures, the file will be referred to the investigating conservation officer. Using Form EB10-03, report to the Crown Prosecutor on the results. Forward a copy of the report to the Enforcement Centre.

9. If the Alternative Measures process is unsuccessful, depending upon advice from the Crown Prosecutor, the case will normally proceed through the court system.

Appendix[1]

PROCEDURES - ALTERNATIVE MEASURES INVOLVING MEMBERS OF FIRST NATIONS

1. Conservation Officers will investigate all offences following established investigative procedures.

2. Cases being considered for Alternative Measures will be forwarded to the designated Resource Area Alternative Measures Coordinator (generally the Resource Area Manager or Enforcement Specialist).

3. The Alternative Measures Coordinator will consult with the appropriate Tribal Council Justice Committee to determine whether or not the community supports the referral of the case to Alternative Measures. If so, upon receiving approval from the Crown Prosecutor, the case will be referred to the Tribal Council Alternative Measures Program.

   If the Tribal Council Justice Committee does not consider the case appropriate for Alternative Measures, it will proceed through the regular court system.

4. Upon completion of the Alternative Measures, the file will be referred to the investigating conservation officer for follow-up reports to the Crown Prosecutor and Enforcement Centre.

5. If the Alternative Measures process is unsuccessful, depending upon advice from the Crown Prosecutor, the case will normally proceed through the court system.

[1] This Appendix was included as Appendix "D" in the original document.

Federal Diversion Policy Guidelines (1997)

1. Introduction

Alternative measures (or diversion as it is sometimes known) is a pre-trial procedure involving the exercise of discretion by Crown counsel not to prosecute an offender. Instead, counsel refers the offender to an individual or agency with the intention of reaching an agreement to deal with the offence outside the judicial process. In appropriate cases, alternative measures may provide greater benefit to the offender, the victim, and society than can the formal criminal process. Indeed, the fundamental principle underlying alternative measures is that criminal proceedings should be used with restraint and only when other less intrusive measures have failed or would be inappropriate. This allows the courts to devote their resources to dealing with serious crime.

The object of alternative measures programs is to have the offender accept responsibility for the offence without going to trial. Participation in an alternative measures program is voluntary; the offender cannot be forced into it. If the offender complies with the diversion agreement, the Crown relinquishes its right to prosecute the offender for the offence.

Diversion can occur before or after a charge is laid. The policy applies after a charge has been laid, except in provinces where pre-charge screening takes place, where it will apply both pre-charge and post-charge. The policy applies to both adults and young offenders.

2. Statement of Policy

2.1 General Principles

Diversion is not intended to be available for every offender and every offence. Rather, it is an acknowledgement that in some cases, because of the nature and circumstances of the offence and the offender, the public interest would be better served by a resolution outside of the traditional criminal process. Generally speaking it will be most suitable for younger offenders and those of previously good character, who have committed minor offences.

2.2 Preconditions to Diversion

Where Crown counsel is considering exercising the discretion to divert an alleged offender, he or she must be satisfied that the following pre-conditions have been met:

- The case meets the criteria in the "Decision to Prosecute" policy (ss. 717(1)(f) and (g), *Criminal Code*, s. 4(1)(f) *Young Offenders Act* (*YOA*));

- The offender has been advised of his or her right to counsel and is aware that he or she does not have to accept diversion (ss. 717(1)(c) and (d), *Criminal Code*, ss. 4(1)(c) and (d) *YOA*);

- The offender is willing to acknowledge responsibility for his or her actions (s. 717(1)(e), *Criminal Code*, s. 4(1)(e) *YOA*);

- A program described in s. 717(1)(a) of the *Criminal Code* or s. 4(1)(a) of the *YOA* exists for which this particular offender would be eligible;

- Appropriate consultation has been undertaken, where necessary, with victims, investigating authorities or other interested parties, and diversion would be in the interests of society, the offender and the victim (s. 717(1)(b), *Criminal Code*, s. 4(1)(b) *YOA*).

3. The Circumstances of the Offender

The policy is aimed generally at offenders who have not violated the criminal law in the past and are unlikely to do so in the near future. Crown counsel should consider the following factors in assessing an offender's suitability:

- Whether the offender has previously violated the criminal law (including convictions, discharges or diversions) and if so, the date and nature of the violations;
- The offender's remorse (including for example, whether the offender has agreed to fairly compensate any victim(s));
- Whether the offender poses a risk to the community;
- Whether the offender is facing other criminal charges.

3.2 The Nature of the Offence

As indicated above, the policy is directed at "minor" offences. "Minor" offences include offences that are objectively less serious or potentially serious offences committed in a less serious way. The following factors are relevant in determining seriousness:

- Whether the offence is summary or indictable;
- Whether a minimum punishment is prescribed;
- Whether the offence usually results in a sentence exceeding three months imprisonment;
- The potential or actual harm to the victim(s) or society in general.

As well, Crown counsel must ascertain whether the offence is the subject of other policies which would affect the decision to divert, e.g. "Spousal Assault", "Native Law Issues", "Impaired Driving Cases", "Firearms and Other Offensive Weapons".

3.3 The Circumstances of the Offence

Existence of any of the following circumstance will preclude diversion:

- Where the offence involved the use of, or threatened use of, violence reasonably likely to result in harm that is more than merely transient or trifling in nature;
- Where a weapon was used or threatened to be used in the commission of the offence;
- Where the offence affected the sexual integrity of a person;
- Where the offence had a serious impact upon the victim (physical, psychological or financial);
- Where the conduct demonstrated sophisticated planning (for example, the offence was part of an ongoing criminal enterprise);
- Where a person trafficked in a controlled substance or possessed the substance for the purposes of trafficking, in or near a school, on or near school grounds or in or near any public place usually frequented by persons under the age of 18 years;
- Where a person trafficked in a controlled substance, or possessed the substance for the purpose of trafficking, to a person under the age of 18 years;
- Where a person used a person under the age of 18 years to commit a drug offence;
- Where the motivation for committing a drug offence was primarily profit.

4. Successful Completion of the Alternative Measures Program

If the offender successfully completes the diversion program, the criminal charge shall be withdrawn or stayed and not re-instituted. If the criminal charge was already withdrawn or stayed before the offender was diverted, the charge shall not be re-instituted. If charges were not laid before the offender was diverted, Crown counsel shall not institute or proceed with those charges.

5. Failure to Complete the Alternative Measures Program

If the offender fails to complete the program, criminal proceedings may be instituted or re-instituted. However, before doing so, Crown counsel should determine why the program was not completed and assess the appropriateness of instituting or re-instituting proceedings in light of those facts. The decision to institute or re-institute proceedings will require the authorization of the Prosecution Group Head or Regional Director.

6. Young Offenders

Some special considerations apply to young offenders through the application of the general policy statements set out in s. 3 of the *Young Offenders Act*, and those matters specifically concerning alternative measures set out in s. 4 of the *Act*. Crown counsel is required to keep those matters in mind when considering diversion for young offenders.

SCHEDULE A

ALTERNATIVE MEASURES (DIVERSION) PROGRAMS

For the purposes of s. 717(1)(a) of the *Criminal Code* and s. 4(1)(a) of the *Young Offenders Act*, acceptable programs of alternative measures include the following:

- any program approved by the Attorney General of a province
- any program approved by a territorial government
- referral to a community justice committee, or to an aboriginal justice committee
- community service work
- restitution or compensation in cash or services
- referral to a specialized program (e.g. life skills, drug or alcohol treatment)
- other reasonable alternatives not inconsistent with the objectives of the policy.

While the foregoing programs are generally acceptable, the suitability of any particular program to any particular offender must be determined by Crown counsel.

Appendix B: Alternative Measures Form

This Appendix contains the Alternative Measures Form used to collect data from programs.

Alternative Measures Program

Revised April 2000

Program Name:

INTAKE: ❑ Youth ❑ Adult CASE TYPE: ❑ Pre-charge ❑ Post-Charge

Case Number: _____ Date of Referral: ___/___/___ (Month / Day / Year)

Police Detachment: _____

Police Incident #: _____ Date of Adjournment: ___/___/___ (Month / Day / Year)

Case Worker: _____

Lawyer Type: ❑ Private ❑ Legal Aid ❑ None ❑ Unknown 2nd Date of Adjournment: ___/___/___ (Month / Day / Year)

Name of Legal Counsel: _____

Name of Prosecutor: _____ Court Location: _____

Offender Information:

Name: _____ (Last Name / First Name / Middle Name)

Date of Birth: ___/___/___ Age: _____ Sex: ❑ Female ❑ Male

Ethnic Origin: ❑ Non-Native ❑ Metis ❑ Other ❑ Non-Status ❑ Status Band Name _____ Phone Number: ___-____

Address: _____

Charge Information:

Number of Charges: _____ Most serious offense: _____ cc# Description: _____

Type of Charge: ❑ Person ❑ YOA ❑ Other CC ❑ Property ❑ OAAJ (systems) ❑ CDSA (drugs) ❑ Provincial Legislation Date of Offense: ___/___/___ (Month / Day / Year)

Date of Charge: ___/___/___ (Month / Day / Year) Intake Date: ___/___/___ (Month / Day / Year)

Education/Employment:
- ❑ working full-time
- ❑ working part-time
- ❑ not applicable due to age
- ❑ not working, attending school
- ❑ not working, not attending school
- ❑ not working, history of employment
- ❑ not working, no history of employment
- ❑ other ----------

Living Arrangement:
- ❑ parental home
- ❑ room and board
- ❑ community home
- ❑ foster home
- ❑ group home
- ❑ no fixed address
- ❑ other _____
- ❑ relative
- ❑ co-habitation
- ❑ own home
- ❑ friends
- ❑ rental
- ❑ therapeutic foster home

Youth Only:

Responsible Child Welfare Agency: ❑ ICFS ❑ DSS ❑ temporary ward ❑ permanent ward ❑ apprehended ❑ none

Name(s) of co-accused: _____

School: _____ Grade: _____

Parental Involvement: ❑ Full ❑ Moderate ❑ Little ❑ None

Mother's Name: _____ Father's Name: _____

Mother's Address: _____

Father's Address: _____

For Police Use Only:

Height: _____ Weight: _____ Hair: _____ Eyes: _____

Scars/Tattoos: _____

Offender Previous History:

- ❑ previous alternative measures
- ❑ violence
- ❑ domestic violence
- ❑ other
- ❑ police alternative measures (cautioning)
- ❑ drug and alcohol abuse
- ❑ bail violations
- ❑ sex crimes
- ❑ driving offenses
- ❑ suicidal
- ❑ property crimes

Number of contacts with police: _____ Comments: _____

Victim Information: Name: _____
last name first name

Age: _____ Sex: ❑ Female ❑ Male Phone Number: ☐☐☐-☐☐☐☐

Address: _____

Type: ❑ Person ❑ Corporate ❑ Government ❑ Public Agency ❑ Small Business

Victim Involvement: ❑ By representative ❑ Verbal information to coordinator ❑ In person ❑ Refused to participate ❑ By letter ❑ Surrogate ❑ By telephone ❑ Victim did not participate

Intake Date: ☐☐/☐☐/☐☐
Month Day Year

Property Involved:

Value: $☐☐☐☐ Damages: $☐☐☐☐ Recovered: $☐☐☐☐

Insurance Claim Filed: ❑ Yes ❑ No Amount recovered by Insurance: $☐☐☐☐

Letters:

Initial victim: _____ Victim Reminder: _____ Closing Victim: _____

Accused: _____ 2nd Reminder: _____ Closing Accused: _____

Meeting: _____ Notices: Crown/Police/File: _____

Outcome Information: Was an agreement reached: ❑ Yes ❑ No

1. Participation: ❑ Family Group conference ❑ Healing Circle ❑ Other Group Conference ❑ Outside referral _____
❑ Accountability Conference ❑ Mediation ❑ Cautioning

2. Type of Intervention: ❑ In House ❑ Referral _____

3. Closure Date: ☐☐/☐☐/☐☐
Month Day Year

4. Meeting Date: ☐☐/☐☐/☐☐
Month Day Year

5. Agreement Deadline: ☐☐/☐☐/☐☐
Month Day Year

6. Result: ❑ payment to victim $☐☐☐☐

❑ formal caution letter

❑ community service ☐☐☐ hours location: _____

❑ donation to charity $☐☐☐☐

❑ service to victim (task)

❑ essay/presentation

❑ service to victim ☐☐☐ hours

❑ formal apology

❑ educational program

❑ referral to _____

❑ other _____

Comments:

7. Case Status: ❑ Active ❑ Charge reactivated ❑ No further involvement

8. Outcome: ❑ unable to make contact ❑ accused refused to participate ❑ agency returned referral ❑ total default ❑ completed as amended ❑ accused denied responsibility ❑ unable to reach agreement ❑ inappropriate referral ❑ partially completed ❑ completed as planned ❑ other _____

9. Level of satisfaction

	Largely Satisfied	Moderately Satisfied	Limited Satisfaction	Dissatisfied	Unknown
Victim:	❑	❑	❑	❑	❑
Offender:	❑	❑	❑	❑	❑
Parents or caregivers:	❑	❑	❑	❑	❑
Police representative:	❑	❑	❑	❑	❑

Approvals:

Prosecutor: _____ ☐☐/☐☐/☐☐
Month Day Year

Agency Intake: _____ ☐☐/☐☐/☐☐
Month Day Year

Police: _____ ☐☐/☐☐/☐☐
Month Day Year

Completion Status:

❑ Offender was successful
❑ Offender was not successful

Agency Signature: _____ ☐☐/☐☐/☐☐
Month Day Year